



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

APR - 3 2014

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Carl L'Esperance  
Safety, Health, and Environmental Manager  
Nestle USA, Inc.  
4301 West 73<sup>rd</sup> Street  
Anderson, Indiana 46013

Dear Mr. L'Esperance:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Nestle USA, Inc. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on APR - 7 2014.

Pursuant to paragraph 30 of the CAFO, Nestle USA, Inc. must pay the civil penalty within 30 days of APR - 7 2014. Your check must display the case name Nestle USA, Inc. and the docket number CAA-05-2014-0017.

Please direct any questions regarding this case to Cynthia King, Associate Regional Counsel, at 312-886-6831.

Sincerely,

Sarah Marshall  
Air Enforcement and Compliance Assurance Section Chief (MI/WI)

Enclosure

cc: Marcy Toney, Regional Judicial Officer, C-14J  
Regional Hearing Clerk, E-19J  
Cynthia King/C-14J  
Phil Perry, IDEM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of: ) Docket No. CAA-05-2014-0017  
)  
Nestle USA, Inc. ) Proceeding to Assess a Civil Penalty  
Anderson, Indiana, ) Under Section 113(d) of the Clean Air Act,  
) 42 U.S.C. § 7413(d)  
Respondent. )  
\_\_\_\_\_ )

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Nestle USA, Inc. (Nestle or Respondent), a corporation doing business in Indiana.
4. Under 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.
8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. On August 18, 1995, 60 Fed. Reg. 43008, EPA approved 326 Indiana Administrative Code (IAC) 2-8-1 through 2-8-17 (FESOP program) as part of the federally enforceable Indiana State Implementation Plan (SIP).
10. Under 40 C.F.R. § 52.23, EPA may take an enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413, when a person fails to comply with any approved regulatory provision of a SIP or with any permit limitation or condition contained within an operating permit issued under a SIP-approved permit program.
11. Under 326 IAC 2-8-2(a), any source required to have a Part 70 permit may apply for a FESOP.
12. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day for each violation, with a maximum of \$270,000, for violations that occurred after March 15, 2004 through January 12, 2009, and may assess a civil penalty of up to \$37,500 per day for each violation, with a maximum of \$295,000 for violations that occurred after January 12, 2009 through December 5, 2013, and a civil penalty of \$37,500 per day for each violation, with a maximum of \$320,000 for violations that occur after December 5, 2013, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

13. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.
14. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

#### **Factual Allegations and Alleged Violations**

15. On March 6, 2007, the Indiana Department of Environmental Management (IDEM) issued Nestle an operating permit, FESOP No. F095-23798-00129, for its facility in Anderson, Indiana (the facility).
16. Permit Condition D.2.11 of FESOP No. F095-23798-00129 requires that "to document compliance with Condition D.2.9, the Permittee shall maintain daily records of pressure drop and flow rate for the wet scrubbers (F1a through F1f) during normal operation."
17. On July 6, 2009, IDEM issued the first significant permit modification, No. 095-27579-00129, for FESOP No. F095-23798-00129.
18. Permit Condition D.2.10 of No. 095-27579-00129 for FESOP No. F095-23798-00129 requires that "to document compliance with Condition D.2.8, the Permittee shall maintain daily records of pressure drop and flow rate for the wet scrubbers (F1a through F1h) during normal operation."
19. On October 13, 2009, IDEM issued the first administrative amendment, No. 095-28455-00129, for FESOP No. F095-23798-00129.

20. On September 15, 2010, IDEM issued the second administrative amendment, No. 095-29404-00129, for FESOP No. F095-23798-00129.
21. On February 28, 2012, IDEM issued renewal operating permit, FESOP No. F095-30582-00129, for the facility.
22. Permit Condition D.2.11 of FESOP No. F095-30582-00129 requires that “to document compliance with Condition D.2.6, the Permittee shall maintain daily records of pressure drop and flow rate for the wet scrubbers (F1a through F1h) during normal operation.
23. Nestle failed to record the flow rate of the wet scrubber associated with Line 1 (EU-14a) from May 9, 2008 to December 18, 2009, in violation of Condition D.2.9 and Condition D.2.11 of FESOP No. F095-23798-00129 and FESOP No. F095-30582-00129.
24. Nestle failed to record the flow rate of the wet scrubber associated with Line 2 (EU-14b) from July 1, 2008 to December 31, 2009, in violation of Condition D.2.9 and Condition D.2.11 of FESOP No. F095-23798-00129 and FESOP No. F095-30582-00129.
25. Nestle failed to record the flow rate of the wet scrubber associated with Line 3 (EU-14c) from September 3, 2008 to December 31, 2009, in violation of Condition D.2.9 and Condition D.2.11 of FESOP No. F095-23798-00129 and FESOP No. F095-30582-00129.
26. Nestle failed to record the flow rate of the wet scrubber associated with Line 4 (EU-14d) from December 2, 2008 to October 5, 2011, in violation of Condition D.2.9 and Condition D.2.11 of FESOP No. F095-23798-00129 and FESOP No. F095-30582-00129.
27. Nestle failed to record the flow rate of the wet scrubber associated with Line 5 (EU-14e) from March 9, 2009 to January 1, 2011, in violation of Condition D.2.9 and Condition D.2.11 of FESOP No. F095-23798-00129 and FESOP No. F095-30582-00129.

28. Nestle failed to record the flow rate of the wet scrubber associated with Line 7 (EU-28a) from November 1, 2010 to March 1, 2011, in violation of Condition D.2.8 and Condition D.2.10 of No. 095-27579-00129 for FESOP No. F095-23798-00129, and Condition D.2.9 and Condition D.2.11 of FESOP No. F095-30582-00129.

**Civil Penalty**

29. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Nestle's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$69,398.70.
30. Within 30 days after the effective date of this CAFO, Respondent must pay the \$69,398.70 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and send to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

31. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Cynthia A. King (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

32. This civil penalty is not deductible for federal tax purposes.
33. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
34. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

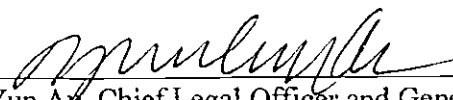
#### **General Provisions**

35. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

36. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
37. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 35, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.
38. Respondent certifies that it is complying fully with the provisions of its permit outlined in Paragraph 22, above.
39. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).
40. The terms of this CAFO bind Respondent, its successors and assigns.
41. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
42. Each party agrees to bear its own costs and attorneys fees in this action.
43. This CAFO constitutes the entire agreement between the parties.
44. This CAFO shall become effective immediately upon filing with the Regional Hearing Clerk.

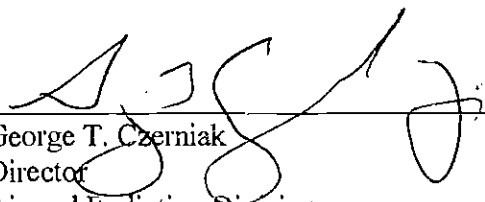
**Nestle USA, Inc., Respondent**

3-21-14  
Date

  
Yun An, Chief Legal Officer and General Counsel  
Nestle USA, Inc. JC

**United States Environmental Protection Agency, Complainant**

4/1/14  
Date

  
George T. Czerniak  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

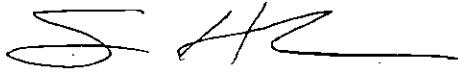
**Consent Agreement and Final Order**  
**In the Matter of: Nestle USA, Inc.**  
**Docket No. CAA-05-2014-0017**



**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4/3/2014  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Nestle USA, Inc.**  
**Docket No. CAA-05-2014-0017**



**Certificate of Service**

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2014-0017 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Carl L'Esperance  
Safety, Health, and Environmental Manager  
Nestle USA, Inc.  
4301 West 73<sup>rd</sup> Street  
Anderson, Indiana 46013


I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Marcy Toney  
Regional Judicial Officer (C-14J)  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Mr. Phil Perry, Chief  
Air Compliance and Enforcement Branch  
Indiana Department of Environmental Management  
100 N. Senate Ave. (Mail Code 61-53 IGCN 1003)  
Indianapolis, Indiana 46204-2251

On the 7 day of April 2014.

  
Loretta Shaffer  
Administrative Program Assistant  
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

70091680 0000 7670 0771